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BENEVOLENT NEUTRALITY AND THE 'IGNORAMUS'S VETO':

RELIGIOUS EXPRESSION IN THE MILITARY

by

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ABSTRACT

The purpose of this research paper is to determine what policy changes are necessary for the Air Force to better protect religious expression while neither censoring nor "establishing a religion" in violation of the First Amendment of the U.S. Constitution. The research methodology used here is a problem/solution framework to determine what characteristic of neutrality towards religion the Air Force should adopt that provides the best solution for upholding the protections of the Establishment and Free Exercise Clauses. The paper's findings include that "strict neutrality," which demands a total separation between church and state, is unworkable and renders religious expression susceptible to violations of the Free Exercise Clause. The paper also finds that "benevolent neutrality," a position more accommodating toward religious expression, protects the free exercise of religion without violating the Establishment Clause. The recommendations include having Air Force Instruction (AFI) 1-1 define "religion" consistently with AFI 36-2706, adding language to AFI 1-1 that states that religious expression does not inherently cause an adverse impact, and requiring Air Force leaders to avoid the use the their positions for to coerce subordinates, or show preferential treatment in the direction of a particular religion.

I. INTRODUCTION

A diversified cross-section of the American culture, with different ages, ethnicities, familial ties, religions and worldviews, combines to create the Air Force culture. In Air Force Instruction (AFI) 1-1, the Air Force has attempted to create unity within this diversity to ensure a potent fighting force to prosecute our nation's wars. Although unity is the goal, conflict arising from differences is likely. Recently several conflicts have arisen in the Air Force with regards to religious expression. Paragraph 2.11 of AFI 1-1 holds "You should confidently practice your own beliefs while respecting others whose viewpoints differ from your own."[1] Some, however, find the expression of religion offensive. Air Force leadership has an interest in quelling conflicts before they tear at the fabric of cohesion which will hamper mission success.

Several examples over the last few years demonstrate a consistent conflict between the secular and the Christian worldviews in the military.[2] After a complaint from the Military Religious Freedom Foundation (MRFF) in 2013 the installation commander at Joint Base Elmendorf-Richardson in Anchorage, Alaska ordered the removal of a chaplain's article titled "'No Atheists in Foxholes': Chaplains Gave all in World War II" from the on-line base forum. The installation commander stated "The 673d Air Base Wing does not advocate any particular religion or belief set over another and upon learning of the complaints from some readers, the article was promptly removed."[3] In removing the article, however, the installation commander denied the expression of religion without justifying the denial with a compelling government interest.[4] Later the article was republished on the base website.[5] A conspicuous disclaimer now appears before the article.[6]

In 2014 a cadet at the U.S. Air Force Academy was forced to remove a scripture verse he had written on his whiteboard outside his dorm room.[7] Once again the MRFF complained,

demanding that not only the verse be removed, but that the cadet and his chain of command be punished. A spokesman for the Academy said "The whiteboards are for both official and personal use, but when a concern was raised we addressed it and the comment was taken down." Pressure from Academy leadership led to the cadet's self-censorship. Later an Academy spokesperson affirmed that the Bible verse on the cadet's whiteboard did not violate Air Force regulations.

At Patrick Air Force Base, officials removed the entire Missing Man Table display set up to honor POWs and those who are MIA because the display contained a Bible.[8] The table had been displayed in the dining facility on base. Among other things, the table included an empty chair, a white table cloth, an inverted glass, and a Bible.[9] The Air Force explained "Unfortunately, the Bible's presence or absence on the table at the Riverside Dining Facility ignited controversy and division, distracting from the table's primary purpose of honoring POWs/MIAs." The Wing Commander said the display would be reintroduced "in a manner inclusive of all POWs/MIAs as well as Americans everywhere." To date, the display has not been reintroduced. Instead, the Wing Commander authorized a POW/MIA flag to replace the display. Though the display contained several elements carefully selected to convey meaning about how POWs had to endure their circumstances, Air Force officials removed the entire display because some found the Bible's presence offensive, while others were offended at the removal of the Bible.

In 2015, citing Air Force Instruction 1-1, the MRFF wrote to Air Force Chief of Staff, General Mark Welsh, demanding Major General Craig Olson be court-martialed for his religious remarks at a National Day of Prayer Task Force event.[10] Major General Olson, while wearing his Air Force uniform at this event, credited God with the success in his career and asked those

in attendance to pray for Department of Defense (DOD) leaders who "need to humbly depend on Christ." He also asked for prayer for the troops preparing to deploy so they could "bear through that by depending on Christ." The Air Force leadership, however, declined to prosecute Major General Olson in this case. The Air Force spokesman stated "His remarks were his own personal opinions and do not represent the United States Air Force." In quoting AFI 1-1, Mikey Weinstein of the MRFF, however, insisted that Major General Olson's remarks were a clear violation of Air Force policy and the Establishment Clause of the Constitution.[11]

In 2015, a complaint arose over the phrase "Have a blessed day" at Robins Air Force Base. Several of the base's gate guards had traditionally greeted those entering the base with the phrase. Though protocol did not compel any gate guard to offer the greeting, the Security Forces Commander, after a complaint had been lodged by the MRFF, immediately ordered the gate guards to refrain from using that phrase because of its sectarian religious nature.[12] Following a groundswell of furor over the banning of the phrase, the Air Force reversed its position and allowed the gate guards to once again greet base visitors with "Have a blessed day."[13]

Other incidents include the removal of the mention of "God" from a unit patch[14], the removal of a Nativity scene from Shaw Air Force Base[15], and an officer being told to remove his Bible from his desk.[16] These incidents show there is confusion among Air Force leaders and members of the general public about the application of the Air Force's policy regarding religious expression.

Although no statistics are available to show the extent of these occurrences, enough anecdotal accounts have been reported that the public has started to pay closer attention to the conflict between secular and religious expression in the military. The high profile nature of the restrictions on religious expression in the Air Force has caused several congressmen to question

the Air Force's policy of religious accommodation and its implementation. Members of Congress thought the issue so important that they addressed the religious liberty of military members in the 2013 National Defense Authorization Act and reinforced it in 2014.

Several of these cases surrounding the silencing of religious expression have started with a single person or a handful of people complaining to commanders or to outside organizations like the MRFF. These complaints have been successful in, at least initially, causing commanders to silence religious expression of Air Force members. Such actions by commanders, even if only temporary, actually violate the Free Exercise Clause of the First Amendment, and have been described by one court as an "Ignoramus's veto."[17]

Because most of the focus of the Air Force policy on religious liberty and the rights of conscience has been on the accommodation of religious practices, the Air Force regulations deal only tangentially with free exercise of religious speech. The lack of clear guidance has led to several incidents where religious speech and opinions informed by religious sentiments have been silenced. Air Force policy has changed several times in the last decade, yet problems with protecting religious expression persist. Without changes to the current regulations, the Air Force policy will continue to create an atmosphere in the Air Force toward silencing religious expression.

The research question this paper will attempt to answer is: what policy changes should the Air Force adopt to better protect religious expression while neither censoring nor establishing a religion in violation of the First Amendment of the U.S. Constitution. Because a policy of "strict neutrality" that demands a total separation of church and state is unworkable, the Air Force should adopt a concept of "benevolent neutrality" in its policy that is more accommodating to religious expression. Benevolent neutrality provides the best way to comply with the Supreme

Court's mandate of neutrality towards religion while protecting Airmen's free exercise of religion.

This research paper will argue that, while the Supreme Court's current interpretation of the First Amendment mandates neutrality, a posture of strict neutrality is not required. Instead, the research will show the Court has carved out a "benevolent neutrality" position in its case law that will allow the Air Force to permit more religious expression without endorsement or establishment of religion. This paper maintains that current Air Force policy is susceptible to restricting too much religious expression. Finally, the paper will argue that certain changes to the Air Force policy regarding religious expression will meet the demands of the Establishment and Free Exercise Clauses and prevent the restriction of religious expression.

As a point of clarification, the discussion of religion in the Air Force often uses the words "religious accommodation" and "religious expression" interchangeably. This paper, however, makes a distinction between them. Accommodation involves the religious practices or observances that require forbearance from official policies or duty requirements. These accommodations include requests for exceptions to grooming standards or immunization requirements, or permission for the wearing of religious items with the uniform, or to have time off for religious observances. Religious expression includes speech or written material that articulate statements or opinions about religion, politics, morality, ethics or society that are informed by one's religious beliefs.

The research design for this paper uses a problem/solution methodology. Section II will briefly present Congress's reaction to the problem surrounding religious expression and accommodation in the military branches. Also, included in section II will be historical background information describing the importance of religion to the nation's maintenance and

military. Section III will set the criteria for Air Force policy's compliance with the Constitution by presenting Supreme Court case law requiring neutrality toward religion and protection of religious expression. In Section III the paper will offer two alternative types of neutrality, strict and benevolent, that the Air Force can adopt toward religious expression. In section IV, this paper will evaluate the Air Force's policy regarding religious expression. Section V will conclude with recommendations to improve the Air Force's policy toward religious expression.

II. BACKGROUND

Public's Response

The way the Air Force has recently handled complaints about religious expression has concerned many in the American public, and has the potential for creating a public affairs problem for the Air Force. Concern over this conflict has even reached the halls of Congress. Congressman John Fleming of Louisiana mentioned that, of the Military Services, the Air Force seems to be worst offender when it comes to restricting religious expression.[18] In March 2014, at a House Armed Services Committee hearing on the Air Force budget, Congressman Randy Forbes questioned the Secretary of the Air Force and the Chief of Staff about the Air Force Academy requiring a cadet to remove a scripture reference from his whiteboard. General Welsh told the congressman that the whiteboard in question was not in the cadet's room, but in a common hallway where others could read it. Congressman Forbes later told a news outlet that he was deeply concerned that the Air Force is teaching that religious expression was incompatible with effective leadership.[19]

After CSAF Religious Freedom Focus Day on 28 April 2014, the Chief of Staff requested Congressman Forbes provide feedback on the language in AFI 1-1. In the Congressman's response he was concerned the language placed a "disproportionate emphasis on religious

neutrality over the protection of religious expression."[20] Because of this emphasis, the Congressman feared the Air Force Policy created an artificial ambiguity for religious expression that could result "in a chilling effect and provide[] a foothold for a heckler's veto."[21] Congressman Forbes then offered suggestions on how the Air Force could remove the emphasis on government neutrality and protect appropriate expressions of faith.

In January 2013 Congress passed the 2013 National Defense Authorization Act (NDAA) with a provision for the "Protection of Rights of Conscience of Members of the Armed Forces and Chaplains of such Members."[22] In December 2013 Congress revisited the protection of religious expression in the military by providing an "Enhancement of Protection of Rights of Conscience of Members of the Armed Forces and Chaplains of such Members."[23] In addition to this enhanced protection Congress required the Inspector General (IG) of the DOD to submit a report to Congress detailing the results of an investigation into compliance with regulations dealing with the adverse personnel actions based on "conscience, moral principles, or religious beliefs." Also, the law required the IG to identify the number of times the DOD IG or the IGs of the military branches were contacted regarding incidents involving the rights of conscience.

Inspector General's Report

On 22 July 2015, the IG completed that report.[24] The report had three objectives to determine:

1. The extent to which the DOD issued and complied with regulations designed to protect the rights of conscience for service members;
2. The extent to which the DOD issued and complied with regulations designed to protect chaplains' rights of conscience; and
3. The number of contacts received by the IG of the DOD and IGs of the US Military Departments regarding incidents involving the rights of conscience of a service member or chaplain.[25]

Regarding Objectives 1 and 2, the Air Force reported that it had complied with the 2013 NDAA and the amendment made in the 2014 NDAA by revising Air Force Instruction 1-1 "Air Force Standards," Air Force Policy Directive 52-2 "Accommodation of Religious Practices in the Air Force," and Air Force Instruction 52-201 "Religious Accommodation Requests." Because the Air Force did not track the status or trends for final disposition of religious accommodation requests, the DOD IG was not able to assess the timeliness of processing those requests.[26]

For Objective 3 of the report, the IG identified a total of 398 contacts across the Services from 2011-2014 concerning the rights of conscience made to the IGs of the DOD and the separate Military Services, along with Combatant Commands, the Defense Privacy and Civil Liberties Division, and the Military Services Equal Opportunity Offices.[27] Twenty-seven percent (107 of 398) of these contacts were broken down into five categories of accommodation: dietary, grooming, medical, uniform, and worship. The other 291contacts were organized in 17 categories for analysis "relating to leadership and command climate and...concerning external forces or process questions."[28]

Additionally, the report organized the contacts into "low density" and "high density" faith groups. The low density faith groups included Judaic, Muslim, Buddhist, Hindu, Pagan, and Wiccan faith traditions, along with those who identified as having a nontheistic belief system.[29] The report was not clear if atheism was categorized as a nontheistic belief system. Low density contacts amounted to 21 percent of all contacts (84 of the 398). The report never dealt with the 79 percent of the contacts from high density faith groups, presumably the several Christian denominations, or why it placed a greater concern on the low density contacts.

The IG report's analysis emphasized the accommodation of religious practices rather than the restrictions on religious expression. This emphasis included a recommendation that the

Under Secretary of Defense for Personnel and Readiness, in conjunction with the Armed Forces Chaplains Board and the Defense Commissary Agency, determine a more effective approach to assuring the demands for kosher and halal foods are met overseas. Other than mention several categories of contacts that appear to fall under religious expression of military members, the IG report said little about how the Military Services are treating the expression of religious faith.

The report acknowledged the difficulty in verifying the completeness of the data.[30] Two areas the report identified for potential inaccuracies were 1) mischaracterization of the nature of the complaint by either the complainant or the recipient because the Military Services generally did not have a code to identify "rights of conscience" issues; and 2) individuals may have chosen not to report incidents through official complaint channels. Left unanalyzed in the report was whether the Military Services routinely restricted religious expression without a compelling government interest. Further investigation is necessary.

Historical Context

Because the Air Force is an arm of the federal government, its actions must comply with the Religion Clauses of the First Amendment of the Constitution. Understanding the current state of the law governing the Free Exercise and Establishment Clauses requires an historical perspective.

Even as late as 1952 the Supreme Court recognized the religious character of this nation. Writing on behalf of the majority of the Court in *Zorach v. Clauson*, Justice William O. Douglas held "We are a religious people whose institutions presuppose a Supreme Being."[31] Though Justice Douglas never offered any evidence or any argument for this presupposition, in 1950s America that we were a theistic religious people was a self-evident truth. Indeed since the foundation of the British Colonies on the North American continent it appears America has been

dominated by a Christian Consensus. "Christian Consensus" conveys the understanding that the populace generally regarded Christianity as true and applied its principles to both public and private life. Documents governing public policies, if not overtly Christian, at least implicitly held to principles of transcendent natural law.[32]

Steeped in this natural law tradition, the Mayflower Compact, the governing document the Pilgrims drafted for the Massachusetts Bay Colony, affirmed that they undertook their endeavor to settle in the New World "for the glory of God, and advancement of the Christian faith…."[33] In fact, they created this oath "in the presence of God" as a witness to their covenant. Over a century and a half later, the writings of several of the Founding Fathers suggest their religious sentiments drove the push for independence from the British crown and Parliament's rule. John Adams affirmed "The general principles on which the fathers achieved independence were. . . the general principles of Christianity. . . I will avow that I then believed, and now believe, that those general principles of Christianity are as eternal and immutable as the existence and attributes of God; and that those principles of liberty are as unalterable as human nature."[34]

The Founders embodied these unalterable principles of liberty in the Declaration of Independence. "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed."[35] To the American people at that time, the equality of mankind, unalienable rights, and the authority to govern ourselves found their source, not in government, nor in humanity, but in God.

In his Farewell Address to the nation George Washington attested to the need for a religious faith to hold the nation together. "Of all the dispositions and habits which lead to

political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism, who should labor to subvert these great pillars of human happiness…Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle."[36]

In a 21 June 1776 letter to Zabdiel Adams, John Adams wrote "[I]t is religion and morality alone which can establish the principles upon which freedom can securely stand. The only foundation of a free constitution is pure virtue."[37] His sentiment remained the same after the Constitutional Convention. Adams affirmed in a letter to the First Brigade of the Third Division of the Militia of Massachusetts that "[W]e have no government armed with power capable of contending with human passions unbridled by morality and religion. . .Our constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other."[38]

Benjamin Rush, signer of the Declaration, Surgeon General of the Continental Army, and a delegate to the Constitutional Convention, ardently held "[T]he only means of establishing and perpetuating our republican forms of government is the universal education of our youth in the principles of Christianity by means of the Bible."[39] Like Washington and Adams, he believed that by removing Christian principles from education, one can effectively remove the foundation of the American republic.

American constitutional law was not created in a vacuum, but in a society with a deep religious tradition. Within this historical context and understanding of religion's role in the foundation and preservation of the country, the Constitutional Convention drafted the U.S. Constitution and, later, the First Congress drafted the First Amendment with the Religion

Clauses. The Supreme Court has even acknowledged the historical context surrounding the First Amendment is "contemporaneous and weighty evidence of its true meaning."[40]

Religion in the Military

The character of the Christian Consensus in America even found its way in the U.S. military. In 1791, the same year the First Amendment was ratified, the First Congress made provisions for the US Army chaplaincy.[41] Congress also prescribed, in 1799, that Navy commanders "take care that divine service be performed twice a day, and the sermon preached on Sundays" aboard their vessels.[42] The next year Congress added that commanders of ships and vessels "cause all, or as many of the ship's company as can be spared from duty, to attend at every performance of worship of Almighty God."[43] Though attendance at religious services is no longer required, U.S. law still "earnestly recommends" attendance "at every performance of worship of Almighty God."[44]

As the American republic faced the challenge of a civil war, Commander-in-Chief Abraham Lincoln ordered that Sunday labor in the Army and Navy be reduced to only what was necessary. He issued this order so "The discipline and character of the national forces should not suffer, nor the cause they defend be imperiled, by the profanation of the day or name of the Most High."[45] In World War II, another president wrote "As Commander-in-Chief I take pleasure in commending the reading of the Bible to all who serve in the Armed Forces of the United States."[46] In March 1941 President Franklin D. Roosevelt's brief letter of encouragement became the foreword in the New Testaments provided to soldiers with public funds.[47] Before the invasion of Normandy on 6 June 1944, General Dwight D. Eisenhower delivered a message to the soldiers, sailors, and airmen of the Allied Expeditionary Force. He concluded his remarks

with an encouragement of corporate prayer. "Good luck! And let us all beseech the blessing of Almighty God upon this great and noble undertaking."[48]

Statistics show that religion still plays an important part in the lives of Airmen. According to Air Force Personnel Center (AFPC), as of December 2015 79.4 percent of Airmen in the Regular Air Force and the Reserve Component identify with a particular religious belief.[49] With 72.9 percent, Airmen selected Christianity in its several denominations as the largest category of religious preference.[50] Those who selected "No Religious Preference" or "Unknown" were about 20.6 percent.[51] Three percent identified their religious preference as either "Agnostic," "Atheist," or "Heathen."

The Air Force has recognized the beneficial impact of religious faith on the wellness of its fighting force. The Comprehensive Airman Fitness program recognizes spiritual well-being as an important component for mission success.[52] Spiritual fitness is defined as "The ability to adhere to beliefs, principles, or values needed to persevere and prevail in accomplishing missions."[53] To the Air Force, the resiliency of Airmen requires their spiritual fitness. For nearly 80 percent of Airmen, religious faith is part of their spiritual fitness.

The Air Force also recognizes that having a religious affiliation is a factor in preventing suicide.[54] Results of a study published in the *American Journal of Psychiatry* confirm the Air Force's understanding that religious affiliation is associated with less suicidal behavior.[55] One study suggested that more religiously devout persons, as compared to others who merely identify with the same religion, are less likely to attempt suicide.[56] If in fact religious affiliation is a factor in preventing suicide, the Air Force has an interest in cultivating an atmosphere that is at least more accommodating toward religious expression. A policy that has the effect of silencing religious expression may very well work against the Comprehensive Airman Fitness program.

III. CURRENT STATE OF THE LAW

The First Amendment provides two restraints on government with respect to religion. The text of the First Amendment reads "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."[57] This amendment means that, first, the government cannot, by law, establish a national religion. Secondly, the government cannot substantially burden or outlaw the expression of religious beliefs or practices. A solution that ensures Air Force policy protects religious expression must meet the criteria of both the Establishment Clause and the Free Exercise Clause of the First Amendment.

Some confusion often arises about when to analyze a case under an Establishment Clause analysis and when a case warrants a Free Exercise Clause analysis. Generally speaking, an Establishment Clause analysis addresses *government* action or coercion that promotes one religion over another.[58] The Free Exercise Clause cases typically involve the direct targeting of *individual* religious practices or the accommodation of religious beliefs from a generally applicable law.[59] Both analyses are necessary in the military context as Service members may be acting in either their government capacity and as individuals. The Establishment Clause analysis applies when government speech or actions are involved. A Free Exercise analysis applies to individual religious expression.

This section begins with the evolution of the Supreme Court's understanding of the Establishment Clause to require a concept of neutrality. The discussion then flows to the requirements of the Free Exercise Clause and the Religious Freedom Restoration Act. Following that the paper discusses the difficulty in applying the concept of strict neutrality regarding

religion. The paper offers the concept of "benevolent neutrality" as the appropriate approach. Finally, this section explains the "Ignoramus's Veto" that attempts to block religious expression because someone is determined to find an establishment of religion even when no reasonable person would conclude that a religious endorsement was made.

Establishment Clause

The judiciary largely ignored the "wall of separation" metaphor[60] until 1947 in the Supreme Court case *Everson v. Board of Education*.[61] That Court held a New Jersey law reimbursing parents for bus fare to transport students to school did not violate the Establishment Clause even though it benefitted students who went to private religious schools. In delivering the opinion of the Court Justice Hugo Black stated "The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach."[62] In moving the constitutional jurisprudence toward the concept of government neutrality, the Court insisted that government cannot pass laws "which aid one religion, aid all religions, or prefer one religion over another."[63]

In extending the concept of government neutrality, the 1968 Court struck down an Arkansas law that prohibited the teaching of evolution in public schools. "Government in our democracy…must be neutral in matters of religious theory, doctrine, and practice…The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion."[64] The Court held that government was absolutely prohibited from adopting programs or practices which aided or opposed any religion and extended the posture of neutrality to position between religion and nonreligion.

In *Lemon v. Kurtzman*, the Court established a test, known as the *Lemon* test, to determine if government action unconstitutionally violated the Establishment Clause.[65] The test

asked three questions: 1) Does the challenged law, or other governmental action, have a bona fide secular or civic purpose; 2) Does the primary effect of the law or action neither advance nor inhibit religion? In other words, is it neutral; and 3) Does the law or action avoid excessive entanglement of government with religion? A negative finding to any of these questions results in the government action being found unconstitutional. The *Lemon* test has been used to strike down laws that include the reimbursement of secular instruction at private, religious schools,[66] an Alabama statute authorizing a period of silence in all public schools for meditation and voluntary prayer,[67] and a Louisiana mandate that if either of the theories of human origins, creationism or evolution, were taught, the other must be taught equally.[68]

The Supreme Court, however, has not made clear whether the *Lemon* test remains the law of the land. Since its introduction in 1973, the *Lemon* test has come under severe criticism. The author of the *Lemon* opinion, Chief Justice Warren Burger, criticized the application of the *Lemon* test in *Wallace v. Jaffree*.

> The Court's extended treatment of the "test" of *Lemon v. Kurtzman*, suggests a naïve preoccupation with an easy, bright-line approach for addressing constitutional issues. We have repeatedly cautioned that *Lemon* did not establish a rigid caliper capable of resolving every Establishment Clause issue, but that it sought only to provide "signposts." "In each [Establishment Clause] case, the inquiry calls for line-drawing; no fixed, per se rule can be framed." In any event, our responsibility is not to apply tidy formulas by rote; our duty is to determine whether the statute or practice at issue is a step toward establishing a state religion. Given today's decision, however, perhaps it is understandable that the opinions in support of the judgment all but ignore the Establishment Clause itself and the concerns that underlie it.[69]

Justice Antonin Scalia criticized the Court's inconsistent application of the *Lemon* test as well as the test itself. "[L]ike some ghoul in a late-night horror movie that repeatedly sits up in its grave and shuffles abroad after being repeatedly killed and buried, *Lemon* stalks our Establishment Clause jurisprudence once again, frightening the little children and school attorneys of Center

Moriches Union Free School District."[70] Justice Sandra Day O'Connor chastised the Court's application of the *Lemon* test in *Aguilar v. Fenton* because it "condemns benign cooperation between church and state."[71]

The Supreme Court has even declined to follow the *Lemon* test in several Establishment Clause cases since 1973. In *Marsh v. Chambers* the Supreme Court refused to apply the *Lemon* test to the Nebraska legislature's practice of opening each legislative session with prayer.[72] In the introductory section of the Court's opinion, the majority mentioned that the Court of Appeals for the Eighth Circuit decided the case by using the *Lemon* test. The majority opinion made no mention of the *Lemon* test in the rest of its analysis. Instead the Court analyzed the practice of legislative prayers in an historical context to find that it did not violate the Establishment Clause. Analyzing Establishment Clause cases by measuring fidelity to the longstanding traditions of the American people—the way the Court analyzed the issue in *Marsh*—is the approach Justice Scalia recommended as a viable replacement for the *Lemon* test.[73]

The Court also refused to apply the *Lemon* test in *Lee v. Weisman*.[74] Using, rather, what Justice Scalia called a "psychological coercion test," the Court struck down the practice of prayers at middle-school graduations because the Court found subtle coercive pressures existed and students had no real alternative which would have allowed them to avoid the fact or appearance of participation in such prayers.

Because the Supreme Court has not been consistent in its application of the *Lemon* test Justice Scalia feared the lower courts would be confused as to it application.[75] In fact, some Circuit Courts have begun to carve out exceptions to the application of the *Lemon* test.[76] Though the Court has offered mixed signals on the *Lemon* test, this research paper assumes that the test is still required.

Free Exercise Clause

The Free Exercise Clause protects the rights of individuals to religious expression without government interference. Most cases involving the Free Exercise Clause deal with law or ordinances that burden religious exercise. The research in this paper does not address the nuances of case law in Free Exercise cases. Instead it focuses on the legal authority that Air Force policy involving religious expression rests.

In applying a standard of "strict scrutiny" in a Free Exercise case, the Supreme Court in *Sherbert v. Verner* held that any incidental burden by government on the free exercise of religion must be justified by a compelling government interest.[77] When government action burdens a constitutional right, strict scrutiny is the legal standard that requires government to show that the application of a statute, or other government action, furthered a compelling interest and used the least restrictive means to further that interest. In trying to define "compelling government interest," the Court stated in *Wisconsin v. Yoder* stated "only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion."[78] The Court made this strict scrutiny a very high standard for government to meet.

In 1990, however, the Supreme Court changed the standard. That year the Court decided *Employment Division v. Smith* regarding the religious ceremonial use of peyote, a drug made from a cactus found in Mexico and in some areas of the southwest region of United States.[79] Oregon law criminalized the use of peyote. Alfred Smith and Galen Black had been fired from their jobs with a drug rehabilitation organization, ironically, because they ingested peyote as part of a religious ceremony of their Native American Church. They applied for unemployment compensation but were denied because they had lost their jobs because of misconduct. They filed suit, claiming that denial of their unemployment compensation violated the Free Exercise

Clause. The attorneys for Smith and Black argued the Court should apply strict scrutiny because the Oregon law criminalized their free exercise of their religion without a compelling interest.

The Court refused to apply the standard of strict scrutiny. Instead, the Court held the Free Exercise Clause does not relieve an individual of the obligation to comply with a law that incidentally forbids the performance of an act that his religious belief requires. Because the Oregon law was not specifically directed at religious practices and was otherwise constitutional as applied to those who engaged in drug use for nonreligious reasons, it was permissible. Therefore, Oregon's law prohibiting the use of peyote, and subsequently, the denial of employment benefits were constitutional.

Following *Smith*, more than 50 Free Exercise cases were decided against religious groups. Congress, in 1993, passed the Religious Freedom Restoration Act (RFRA) in response to the Court's decision in *Smith*.[80] With this act Congress found that laws "neutral" toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise. Congress then applied a strict scrutiny standard to all federal laws and their implementation.

The significance of this legislation is that it places a standard of strict scrutiny on the actions of the Air Force that substantially burden the free exercise of religion. Any action by the Air Force to deny the free exercise of religion must be in furtherance of a compelling government interest and use the least restrictive means to accomplish that compelling interest. The definition of a "compelling government interest" is somewhat difficult to nail down. As we will see in Section IV, the Air Force has identified several areas it considers to be a compelling government interest.

Strict Neutrality

As we have seen with Supreme Court case law, accomplishing neutrality is not by some formula or bright line rule. The Supreme Court's current interpretation of the Religion Clauses and the US Code require the Air Force to remain neutral with respect to religion,[81] and refrain from restricting religious expression without a compelling government interest.[82] But, what does neutrality mean?

Two approaches for Air Force policy to meet the demands of the Constitution are "strict neutrality" and "benevolent neutrality." Strict neutrality applies a total separation of government action and religious activity or expression where incidental benefits to religion are considered an establishment of religion. Benevolent neutrality holds that some cooperation between government and religion is appropriate and does not threaten to establish a religion. The best approach for the Air Force is one that allows for the most religious expression without favoring one religion over another.

With the murkiness of the Establishment Clause waters presenting no clear guide to how the Air Force must approach the expression of religion in its ranks, the concept of strict neutrality has persisted. The MRFF, based on its understanding of Supreme Court's rulings, insists strict neutrality is required. The MRFF suggests the Air Force ensure no Airman is compelled in any way to witness or engage in any religious exercise, or be subjected to religious proselytization, evangelization or persuasion of any sort in a military setting.[83] Strict neutrality imputes the actions of members in uniform, especially commanders and other leaders, to the Air Force itself. According to strict neutrality, a cadet writing a scripture verse on a whiteboard provided by the Air Force is a violation of the Establishment Clause because government property cannot be used at all to promote a religious message.

The position of strict neutrality, if the Air Force were to adopt it, would remove solemnizing prayers at ceremonial events because prayer promotes religion over nonreligion. Strict neutrality would do away with the chaplain's corps because they are paid with public funds to promote a religious perspective. Strict neutrality would prevent individual Airmen from offering comforting or encouraging religious messages to fellow Service members because the religious expressions are offered in a military setting. Strict neutrality, essentially, is that the Air Force must guarantee Airmen the freedom *from* religion

Even though some posit, like the MRFF, that the application of strict neutrality towards religion is imperative, it is becoming clearer that it is also impossible. In his essay "The Illusion of Religious Neutrality" Steven D. Smith, the Warren Distinguished Professor of Law at the University of Sand Diego, illustrated this impossibility of strict neutrality in his analysis of *Epperson v. Arkansas* which struck down an Arkansas law that prohibited the teaching of evolution in public schools.[84] In declaring that the government must be neutral in matters of religion, the Court in *Epperson* also said "the State may not adopt programs or practices in its public schools or colleges which 'aid or oppose' any religion. This provision is absolute."[85] The Court held that since the teaching of evolution is opposed some religious views, Arkansas impermissibly adopted the law in order to protect such religions from contrary views. Professor Smith concludes that by the Court's own logic—that evolution contradicts the teachings of some religions and, the Constitution imposes an absolute prohibition against public school programs that "aid or oppose" any religion—the *teaching* of evolution in public schools would also be prohibited because it opposes religion. Strict neutrality in this case then forbids states from prohibiting the teaching of evolution and forbids them from teaching evolution.

Indiana University Robert H. McKinney School of Law professor, R. George White highlights problems related to the concept of strict neutrality which must be maintained, not just between religions, but also with irreligion.[86] He pointed out that the evils that case law seeks to avoid are sectarianism, denominational advancement, exclusivity, intolerance, favoritism, proselytization, discrimination, or religious marginalization. According to professor Wright, the rationale behind these Establishment Clause cases is that they try to universalize a common ground among those of different creeds by assuming in the end they are kindred spirits.[87]

In suggesting that the courts do not have a coherent, workable sense of religious neutrality, professor Wright stated "the problem is that the courts will always have several important neutrality considerations that pull in various, irreconcilable directions."[88] One can quickly see the chance of common ground on religious expression between a theist, who believes in a supreme being, and an atheist, who does not believe in a supreme being, is remote. How can a government be strictly neutral as between them?

The majority in *McCreary County v. American Civil Liberties Union of Kentucky* approvingly quoted Justice John Marshall Harlan II's dissent in *Sherbert v. Verner*. Justice Harlan stated "The constitutional obligation of neutrality...is not so narrow a channel that the slightest deviation from an absolutely straight course leads to condemnation."[89] Following the Supreme Court's ruling in *McCreary County*, the US Court of Appeals for the Ninth Circuit refused to apply "an absolute standard of neutrality because doing so would evince a hostility toward religion that the Establishment Clause forbids."[90]

Justice Arthur Goldberg warned that "untutored devotion to the concept of neutrality can lead to invocation or approval of results...of a brooding and pervasive devotion to the secular and a passive, or even active, hostility to the religious."[91] Even in *Lemon*, the majority opinion held

"Our prior holdings do not call for total separation between church and state; total separation is not possible in an absolute sense. Some relationship between government and religious organizations is inevitable."[92] In his dissent, Justice Scalia recently observed that neither the Constitution nor our history and tradition requires strict neutrality between religion and irreligion.[93]

One has to notice that a plain reading of the text of the First Amendment and the rest of the Constitution finds neither the mention of neutrality toward religion, nor the command to erect a "wall of separation between Church and State."[94] Religious freedom is the goal of the First Amendment; not religious suppression.[95] The Constitution provides no guarantee for the freedom from religion. Supreme Court case law does not require strict neutrality that shields an observer from unwanted religious expression. For over 150 years of constitutional governance in America, strict neutrality toward religion was not required nor was it practiced in the military. While preventing coercion is important, the concept of strict neutrality is unworkable and would deny too much religious expression in the military.

Benevolent Neutrality

Something impossible to obtain or maintain cannot be required or expected, yet the Supreme Court's current interpretation of the Religion Clauses demands at least some form of neutrality. To reconcile this apparent impasse, the Court has provided in its First Amendment cases the concept of "benevolent neutrality." The Supreme Court has reiterated that neutrality does not require government to completely ignore religious principles or institutions. The fountainhead for the Court cases involving the concept of neutrality in Establishment Clause cases, *Everson*, also held that the Constitution did not require the government to be the adversary

to religion. "State power is no more to be used so as to handicap religions than it is to favor them."[96]

The Court held in *Zorach* "When the state encourages religious instruction or cooperates with religious authorities...it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs."[97] In fact the majority stated "To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups. That would be preferring those who believe in no religion over those who do believe."[98]

The course of constitutional neutrality, the Supreme Court affirmed in *Walz v. Tax Commission of New York*, is not a rigid, straight line. The general principles of the First Amendment require that the American people "will not tolerate either governmentally established religion or governmental interference with religion. Short of those expressly proscribed governmental acts there is room for play in the joints productive of a *benevolent neutrality* which will permit religious exercise to exist without sponsorship and without interference."[99]

The effect of government action on religious expression must be considered when neutrality is applied. The Supreme Court once again reaffirmed the concept of benevolent neutrality in its holding that "Our cases leave no doubt that in commanding neutrality the Religion Clauses do not require the government to be oblivious to impositions that legitimate exercises of state power may place on religious belief and practice."[100] According to Justice Goldberg the purpose of the Religion Clauses is "to promote and assure the fullest possible scope of religious liberty and tolerance for all and to nurture the conditions which secure the best hope

of attainment of that end."[101] Government action must not be aimed at restricting religious expression, but must provide a way for it to flourish.

The assurance that every action of an Airmen while on duty be sterilized from a religious taint is not required by the Constitution, and, according to Supreme Court case law, may actually demonstrate an unconstitutional hostility toward religion. Strict neutrality avoids religious expression simply because it is religious. Benevolent neutrality does not. While not favoring any particular religion, benevolent neutrality strikes a more accommodating tone toward religion that is true to our nation's religious heritage that recognizes the benefits of religion, yet still provides a barrier to the establishment of religion.

'Ignoramus's Veto'

The incidents of the Air Force's silencing religious expression often began with a complaint, or threat of a complaint, from an organization like the MRFF. As shown in Section I, the Air Force's reaction has been to silence the religious expression immediately, only to decide later that restricting the expression was in error.

Courts have consistently held that government may not restrict private religious speech in a public forum simply because of it religious content.[102] Government regulation of private speech also must not discriminate based on the viewpoint of the speaker.[103] On the other hand, when government is the speaker, the Supreme Court has applied an "endorsement test" along with its Establishment Clause neutrality analysis (typically, the second prong of the *Lemon* test).[104] This "endorsement test" looks through the eyes of a reasonable observer to determine whether the government speech promotes or disparages religion. If a reasonable observer would see the government speech or action as an endorsement of religion then the government speech or action violates the Establishment Clause.[105]

Despite the congenial relationship between religion and government the Supreme Court has carved out under its benevolent neutrality doctrine, some still insist there is an unconstitutional establishment with religious expression or symbols related to government action or speech in any way. One court concluded that such a constitutional challenge by an unreasonable observer amounted to a new threat to religious speech in the concept of the "Ignoramus's veto."[106]

The US Court of Appeals for the Sixth Circuit stated "The Ignoramus's Veto lies in the hands of those determined to see an endorsement of religion, even though a reasonable person, and any minimally informed person, knows that no endorsement is intended or conveyed."[107] In this case, a private religious organization received a permit to display a 20-foot high menorah on government property. Americans United for Separation of Church and State and several individuals sued, claiming the placement of the menorah on government property violated the Establishment Clause. The circuit court refused to accept the plaintiffs' assertion an impermissible endorsement of religion existed when an observer simply sees a religious object in a prominent public place and assumed the government endorsed it.

Although the circuit court analyzed this particular case under the traditional public forum doctrine related to free speech cases, the concept of an "Ignoramus's veto" can be readily applied to the Air Force context where an unreasonable observer finds an Air Force endorsement of religion in an individual Airman's religious expression. Several of the complaints about religious expression in the Air Force seem to fall into this category of the "Ignoramus's Veto."

One example involves the Free Exercise Clause. The Air Force swiftly reacted to a complaint about a scripture verse on a whiteboard just outside of a cadet's room at the Air Force Academy. During Congressman Forbes's questioning at the House Armed Services Committee

meeting, the Chief of Staff informed the congressman that the requirement to remove the verse stemmed from it being posted on a whiteboard outside of the cadet's dorm room on a board used for official correspondence. The whiteboards, however, had been consistently used to convey personal messages as well. Despite the established pattern of the whiteboards being used by cadets for personal messages, and the cadet holding no real supervisory position over any of the other cadets in the dorm, the complaint unreasonably saw an Air Force endorsement of religion merely from a verse on a whiteboard. Without a compelling interest, the Air Force required the cadet to remove the religious expression.

Another example of an "Ignoramus's veto" quelling religious expression surrounds the Establishment Clause. A complaint lodged because the Missing Man Table at the dining facility on Patrick Air Force Base contained a Bible caused the installation commander to order its removal. A Bible was not the only item on the display. The display included several items that conveyed meaning, like a lemon wedge, salt, chairs, a white tablecloth, and an inverted glass. Because the display was placed there by the dining facility staff, in an area that is not traditionally considered a public forum, the message conveyed by the table can be attributed to the Air Force, thus, requiring an analysis using the *Lemon* test.

The overall purpose of the display was not to promote a religious message. The Wing Commander acknowledged an overall message of the table outside of the Bible when he said the controversy surrounding the presence of the Bible was "distracting from the table's primary purpose of honoring POWs/MIAs."[108] According to the National League of POW/MIA Families, the purpose of the Missing Man Table is to encourage the remembrance of POWs and Service members missing in action, and to honor them for their sacrifice. This objective for the display provided a secular purpose that met the first prong of the *Lemon* test.

The second prong's neutrality test is met as well. Several other symbols of a non-religious nature accompanied the Bible on the display. Under a benevolent neutrality approach, even though the presence of a Bible on the display incidentally benefited religion[109], the overall display neither advanced nor inhibited religion. Finally, the display did not threaten to entangle the Air Force with religion. The display was passive in nature. As such, there was no requirement for an Airman to view it or even contemplate its meaning. No official Air Force interpretation accompanied the display or the Bible. No public money was needed to maintain the display. Other than the location in a dining facility, the Air Force was detached from the display.

Despite the display's overall message had a secular purpose, it neither advanced nor inhibited religion, and it did not excessively entangle the Air Force with religion, a complaint unreasonably found an establishment of religion in the presence of the Bible on the table. Though the Staff Judge Advocate determined that neither removing the table nor allowing it to remain with the Bible violated the Establishment Clause, the "Ignoramus's veto" resulted in the installation commander simply avoiding the controversy by not putting the display back up.

IV. ANALYSIS OF AIR FORCE POLICY

Over the past decade the Air Force has been responsive to concerns about issues surrounding the Establishment and Free Exercise Clauses, but more needs to be done. This section begins by discussing changes to the Air Force policy regarding religion from 2005 to 2014. The section concludes with an examination of current Air Force policy.

Policy Changes

Reacting to complaints and threats of lawsuits that accused the Air Force of violating the Establishment Clause by “allowing aggressive evangelism” at the Air Force Academy, the Air

Force published the 2005 Interim Guidelines Concerning Religious Expression in the Air Force.[110] In 2006, the Air Force revised these guidelines.[111] In the revision, the policy reiterated that the Air Force would "remain officially neutral regarding religious beliefs, neither officially endorsing nor disapproving any faith, belief, or absence of belief."[112] The Revised Interim Guidelines even recognized worship, prayer, study, and discussion are integral to the Free Exercise Clause. The policy stated that "Nothing in this guidance should be understood to limit the substance of voluntary discussions of religion, or the exercise of free speech" where the discussions were personal and not official and were free from coercion.

After complaints of Air Force violations of the Establishment Clause persisted, in 2011 Chief of Staff, General Norton Schwartz issued a memorandum on Maintaining Government Neutrality Regarding Religion.[113] The memorandum emphasized the importance of the concept of neutrality to the Air Force policy, and that leaders must avoid the appearance of using their positions to promote personal religious beliefs or to extend preferential treatment for any religion. In an effort to prevent the slightest perception of official endorsement, General Schwartz expected "chaplains, not commanders, to notify Airmen of Chaplain Corps programs."

On 7 August 2012, much of General Schwartz' letter was published in AFI 1-1 Air Force Standards. Paragraph 2.11, titled "Government Neutrality Regarding Religion," stressed neutrality with language that tended toward hostility for religious expression rather than protection for it. In 2014 Congressman Forbes addressed this misplaced priority in his letter to General Welsh. "[T]he language places a disproportionate emphasis on religious neutrality over the protection of religious expression by addressing neutrality first and by primarily addressing neutrality and accommodation rather than reinforcing the importance of free exercise."[114]

Not only did the policy emphasize neutrality at the expense of free exercise, but it also had a self-censoring effect on religious expression. The AFI required leaders at all levels to avoid the actual or apparent use of their positions to promote religious beliefs to their subordinates. The policy warned leaders that failure to do so would not only have the potential to degrade morale, good order, and discipline, but might also degrade the trust and confidence the public held in the Air Force. This requirement, according to Congressman Forbes, created "an artificial grey area for religious expression that results in a chilling effect and provides a foothold for a heckler's veto."[115]

An Air Force spokesperson confirmed to Fox News that it was Air Force policy that "When on duty or in an official capacity, Air Force members are free to express their personal religious beliefs as long as it does not make others uncomfortable."[116] The policy also prohibited proselytizing. With requirements to avoid the "apparent use" of leadership positions and with religious expression permitted only if others did not feel uncomfortable, one can easily see how the Air Force policy was ripe for abuse by an "Ignoramus's veto."

Under the enforcement of this policy an officer was told to remove his Bible from his desk, an Air Force cadet was required to remove a scripture verse from his whiteboard outside his room, a POW/MIA display was removed because it contained a Bible, and a First Sergeant was removed from his position after refusing to tell his commander his position on same-sex "marriage." Against this backdrop Congress started putting pressure on the Air Force to address the silencing of religious expression highlighted in the aforementioned exchange between General Welsh and Congressman Forbes at the House Armed Forces Committee hearing. Congress' response was to strengthen the rights of conscience for Service members and require

the DOD IG report. Unfortunately, the IG report largely ignored this issue of the denial of religious expression in the military.

Current Policy

In response to Congress' concerns, the Air Force amended its policy regarding the free exercise of religion, incorporating some of Congressman Forbes's suggestions when it published Change 1 to AFI 1-1 on 12 November 2014. The updated AFI addresses free exercise of religion and religious accommodation first in paragraph 2.11. The AFI states "Every Airman is free to practice the religion of their choice or subscribe to no religious belief at all."[117] The AFI preserves the right of an Airman's individual expressions of conscience, moral principles and religious beliefs. In fact, the AFI encourages Airmen to "confidently practice your own beliefs" while respecting others who do not have the same viewpoint. However, the Air Force reserves the authority to deny the free exercise of religious expression if those expressions would have an adverse impact on military readiness, unit cohesion, good order, discipline, health and safety, or mission accomplishment.

Paragraph 2.11.1 informs the Airman that religious beliefs do not automatically excuse him from complying with directives, instructions, and lawful orders. The Airman may request a religious accommodation. Commanders and supervisors are to fairly consider requests. The AFI requires the Airman to comply with directives, instructions, and lawful orders until the request is approved.

Paragraph 2.11.2 requires decisions denying free exercise of religion or an accommodation request be based on the facts of the case, and must directly relate to the compelling government interest the Air Force identified as military readiness, unit cohesion, good order, discipline, health and safety, or mission accomplishment. The manner of the denial

must also be the least restrictive means necessary to avoid the cited adverse impact. This paragraph recognizes the need for Air Force policy to comply with RFRA's imposition of strict scrutiny on the denial of religious expression.

In paragraph 2.12 the Air Force policy handles the balance between the Free Exercise Clause and the Establishment Clause. Gone is the over-emphasis on strict neutrality. In fact, the word “neutrality” is not found in the AFI, although the principle of neutrality is still subtly there. The paragraph reminds leaders, who are in a unique position of authority over their subordinates, to balance their own constitutional protection of free exercise of religious beliefs and the constitutional mandate against the establishment of religion. Leaders "must ensure their words and actions cannot reasonably be construed to be officially endorsing or disapproving of, or extending preferential treatment for any faith, belief, or absence of belief."

V. CONCLUSION

Recommendations

Though the mood of AFI 1-1 appears more welcoming to religious expression some work still needs to be done to prevent an atmosphere in the Air Force that tends toward silencing religious expression through an "Ignoramus's veto." The following are recommendations:

1. Paragraph 2.11 of AFI 1-1 should be amended to read “Every Airman is free to practice the religion of his choice, which includes a belief in no supreme being at all.”

Currently the paragraph reads "Every Airman is free to practice the religion of their [sic] choice or subscribe to no religious belief at all." This language is inconsistent with the definition of religion in AFI 36-2076, and has the potential for confusing atheism and agnosticism with the Air Force's position of having no official religion.

AFI 36-2706 defines “religion” as “A personal set or institutionalized system of attitudes, moral or ethical beliefs, and practices held with the strength of traditional religious views,

characterized by ardor and faith and generally evidenced through specific religious observances."[118] Everyone has a personal set of beliefs that shape attitudes and moral behavior. Though some insist that atheism is not a religious belief,[119] AFI 36-2706 appears to define it as a religion. Certainly an atheist or an agnostic, who subscribes to no particular institutionalized system, has just as ardent a personal set of attitudes, moral or ethical beliefs, practiced with the same strength of faith and conviction as any adherent to Christianity. In fact, the Air Force's Free Exercise of Religion training course includes groups that "Do not affirm the existence of a supreme being" under the definition of religion.[120]

The atheist or agnostic is not devoid of a religious belief, according to the definition in AFI 36-2706. His religious belief is in the non-existence of God. In the same regard someone who identifies with no religious belief, yet lives his life as if there is no supreme being, still has a personal set of attitudes, morals and ethical beliefs. The atheist and agnostic have attitudes, morals, and ethics based somewhere. The definition of religion in AFI 36-2706 essentially includes everyone, even the atheist and agnostic, so the language in AFI 1-1 referring to "no religious belief at all" is confusing and conflicts with the definition of religion in AFI 36-2706.

The new wording brings AFI 1-1 in line with the definition of religion provided in AFI 36-2706. This subtle finessing of the language continues to protect the rights of religious belief for the atheist while correctly identifying his belief as religious. The change in the language also highlights the religious nature of atheism and agnosticism to remind leaders that the Air Force has a constitutional requirement to be neutral and not to favor the belief in the non-existence of a supreme being over the belief in his existence.

2. Paragraph 2.11.2 of AFI 1-1 should conclude with "In making this decision, the mere expression of a religious belief does not inherently adversely impact military readiness, unit cohesion, good order, discipline, health and safety, or mission accomplishment."

Congress and the American public have requested the Air Force do more to protect religious expression. The "Ignoramus's veto" has quieted religious expression even though the Constitution and federal law requires its protection where there was no reasonable threat of an establishment of religion. The recommended change of the language protects religious expression more thoroughly and allows the Air Force to come in line with a benevolent neutrality anticipated by the Supreme Court case law and our nation's religious history and traditions.

This additional language preserves the Air Force's authority to deny religious expression in appropriate cases. Yet, it causes leaders to pause to evaluate a complaint's merit before reacting which has led to silencing free expression of religion. Also, the suggested language removes the "artificial grey area for religious expression" that concerned Congressman Forbes.[121] The burden to demonstrate the adverse effect then rests on the one deciding whether to deny religious expression instead of the one making the expression .

3. The final sentence of paragraph 2.12 should be replaced with "They must avoid the actual use of their position to coerce subordinates to follow a religious belief or practice or to extend preferential treatment for any religion."

The current policy is too demanding and may make compliance impossible for Air Force leaders. The paragraph now reads Air Force leaders "must ensure their words and actions cannot reasonably be construed to be officially endorsing or disapproving of, or extending preferential treatment for any faith, belief, or absence of belief."[122]

The problem with the current AFI is the use of the word “ensure.” To “ensure” something means “to secure or guarantee; to make sure or certain.”[123] Certainly leaders are in a unique position over subordinates and must avoid coercion when it comes to religious beliefs. However, this AFI requirement places too onerous of a burden on the Air Force leader to make

certain there is no perception of religious favoritism. The only real way to guarantee his words or actions cannot be reasonably construed as showing favoritism is to refrain from making any religious expression.

The Air Force policy, as written, tends toward chilling the religious speech of Air Force leaders because they will be fearful of even an "Ignoramus's veto." Leaders may not take the chance to express religious beliefs and risk superiors finding a complaint reasonable when the leader thought it to be unreasonable. The directive nature of AFI 1-1 makes failure to adhere to its standards a dereliction of duty. Air Force policy threatens to criminalize leaders who fail to ensure their comments or actions are not reasonably construed as religious favoritism. One can see how any complaint, including an “Ignoramus’s Veto,” would lead to the tendency for silencing religious speech. Such a guarantee is not required by the Constitution or Supreme Court opinions.

The real danger is not in the perception of endorsement but in the actual misuse of a position to coerce subordinates or to officially endorse a religion. This recommended change still protects subordinates from coercion and the Air Force from officially endorsing a religion. The new language also preserves the right of Air Force leaders to express their own religious beliefs, while removing the onerous burden on them to guarantee someone will not perceive an official endorsement of religion. Like Congressman Forbes's suggestions, the ones proposed here properly reflect the special protection for religious freedom under the Constitution and “the reality that most expressions of faith will strengthen the military rather than divide it.”[124]

Conclusion

Several complaints about religious expression over the last three years have led Air Force leaders to restrict religious expression without sufficient reasons. Public outcry because of

religious restrictions prompted Congress to enact protections for the rights of conscience of military members. Congress required the DOD IG to submit a report on how the Military Services complied the protections for the rights of conscience. This report, however, did not address the problem of the restricting of religious expression.

The goal of this research paper has been to determine what policy changes the Air Force should adopt to protect the religious expression of Airmen without violating the Establishment Clause of the First Amendment. The Air Force has a constitutional responsibility to protect religious expression while the Supreme Court has imposed a responsibility on government to remain officially neutral toward religion.

To determine how to best balance these two responsibilities, this paper analyzed two types of neutrality toward religion: strict neutrality which demands a total separation between Air Force activities and religious expression, and benevolent neutrality which offers a more accommodating path for the religious beliefs of Airmen. The research showed that strict neutrality restricted too much religious expression. Based on the religious history and traditions of the American people, and Supreme Court case law, benevolent neutrality is the best approach for protecting religious expression without violating the Establishment Clause.

In a case involving the Establishment Clause, Justice Goldberg stated that the "measure of constitutional adjudication is the ability and willingness to distinguish between real threat and mere shadow."[125] Under current and former Air Force policy regarding religious expression, too many leaders have been spooked by the shadow of the "Ignoramus's veto" and have acted swiftly where no real threat of an establishment of religion existed. The posture of benevolent neutrality as outlined by the Supreme Court can provide the "play in the joints" of the First Amendment for the Air Force to protect religious expression while preventing the establishment of religion. The

recommendations provided in this paper can help the Air Force implement this position of benevolent neutrality so that the religious expression of Airmen will not be threatened by the silencing effect of an “Ignoramus’s veto.”

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[1] Air Force Instruction (AFI) 1-1, *Air Force Culture*, 7 August 2012, Incorporating Change 1, 12 November 2014, par. 2.11.

[2] Other branches of the military have seen the same conflict between secularism and Christianity. See "Living in Tension: Secularism and Christianity in the Military," by Chaplain (Colonel) Matthew Goff, available at www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA559873.

[3] Todd Starnes, "Chaplain Ordered to Remove Religious Essay from Military Website," *FoxNews.com*, http://radio.foxnews.com/toddstarnes/top-stories/chaplain-ordered-to-remove-religious-essay-from-military-website.html (accessed 15 December 2015).

[44] A "compelling state interest" is a legal term of art that indicates an interest so important to the administration of government that it justifies an incidental imposition on the exercise of a constitutional right.

[5] Alex Murashko, "Air Force Republishes Chaplain's 'No Atheists in Foxholes' Article to Base Website," *ChristianPost.com*, 14 August 2013, http://www.christianpost.com/news/air-force-republishes-chaplains-no-atheists-in-foxholes-article-to-base-website-102226/ (accessed 15 December 2015).

[6] Chaplain (Lt. Col.) Kenneth Reyes, "'No atheists in foxholes': Chaplains gave all in World War II," *Chaplain's Corner*, 8 August 2013, http://www.jber.af.mil/news/story.asp?id=123359099 (accessed 15 December 2015).

[7] Todd Starnes, "Air Force Academy Removes Bible Verse from Cadet's Whiteboard," *FoxNews.com*, 11 March 2014, http://www.foxnews.com/opinion/2014/03/11/air-force-academy-removes-bible-verse-from-cadet-whiteboard.html (accessed 15 December 2015).

[8] Todd Starnes, "Air Force Removes Bible from POW-MIA Display," *FoxNews.com*, 31 March 2014, http://www.foxnews.com/opinion/2014/03/31/air-force-removes-bible-from-pow-mia-display.html (accessed 15 December 2015).

[9] According to the National League of POW/MIA Families, the empty chairs symbolize the fact that POWs and MIAs are missing from us. The white table cloth symbolizes the purity of the motives of the POWs/MIAs when answering the call to serve. The inverted glass symbolizes their inability to share in a toast. The Bible represents the strength through faith to sustain us and those lost from our country. Information on the Missing Man Table and the Missing Man Ceremony is available at http://www.pow-miafamilies.org/events/recognition-day/missing-man-honors-ceremony/.

[10] Jeff Schogol, "Air Force Won't Punish General for Speech about God," *AirForceTimes.com*, 21 May 2015, http://www.airforcetimes.com/story/military/2015/05/21/air-force-wont-punish-general-for-speech-about-god/27719487/ (accessed 15 December 2015).

[11] Ibid.

[12] Karli Barnett, "Robins AFB Personnel Banned from Giving Unwelcome 'Blessings'," *13WMAZ.com*, 9 March 2015, http://www.13wmaz.com/story/news/local/robins-air-force-base/2015/03/12/robins-afb-personnel-banned-from-wishing-blessed-day/70202772/ (accessed 15 December 2015).

[13] Jeff Schogol, "Airmen Can Wish Visitors at Robins a 'Blessed Day' Again," *AirForceTimes.com*, 12 March 2015, http://www.airforcetimes.com/story/military/2015/03/12/airmen-can-wish-visitors-at-robins-a-blessed-day-again/70236366/ (accessed 19 December 2015).

[14] Jeremy Herb and Daniel Strauss, "GOP Lawmakers Protest Removal of 'God' from Air Force Unit's Patch," *TheHill.com*, 8 February 2012, http://thehill.com/policy/defense/209289-lawmakers-protest-removal-of-god-reference-from-air-force-patch (accessed 15 December 2015).

[15] Official Website of Shaw AFB, S.C., "Nativity Scene Removal at Shaw AFB," 12 December 2013, http://www.shaw.af.mil/news/story.asp?id=123373981 (accessed 14 December 2015).

[16] Todd Starnes, "Air Force Officer Told to Remove Bible from Desk," *Townhall.com*, 3 May 2013, http://townhall.com/columnists/toddstarnes/2013/05/03/air-force-officer-told-to-remove-bible-from-desk-n1586385 (accessed 15 December 2015).

[17] In *Americans United for Separation of Church and State v. City of Grand Rapids*, in *Federal Reporter 2d*, vol. 980 (6th US Court of Appeals 1992), 1553, the US Court of Appeals applied the principle of the "heckler's veto" to

an Establishment Clause case. A "heckler's veto" is an attempt, by those who dislike a person's speech, to create such a disturbance that the speaker must be silenced for the sake of public safety. The 6th Circuit stated "The Ignoramus's Veto lies in the hands of those determined to see an endorsement of religion, even though a reasonable person, and any minimally informed person, knows that no endorsement is intended." The "Ignoramus's Veto" will be discussed in section III.

[18] Starnes, "Air Force Removes Bible from POW-MIA Display," http://www.foxnews.com/opinion/2014/03/31/air-force-removes-bible-from-pow-mia-display.html.

[19] Colby Itkowitz, "Air Force Budget Hearing Debates Religious Freedom," *WashingtonPost.com*, 18 March 2014, https://www.washingtonpost.com/blogs/in-the-loop/wp/2014/03/18/air-force-budget-hearing-debates-religious-freedom/ (accessed 15 December 2015).

[20] Congressman J. Randy Forbes to Chief of Staff General Mark A. Welsh III, letter, 6 May 2014, 1. The "heckler's veto is explained in endnote 17.

[21] Ibid. A "heckler's veto" is explained in endnote 17.

[22] *National Defense Authorization Act 2013*, Public Law 112-239, 112th Cong. 2d sess., 2 January 2013, §533.

[23] *National Defense Authorization Act 2014*, Public Law 113-66, 113th Cong. 1st sess., 26 December 2013, §532.

[24] Report of Inspector General, U.S. Department of Defense, "Rights of Conscience Protections for Armed Forces Service Members and Their Chaplains" Report No. DODIG-2012-148, 22 July 2015.

[25] Ibid., 2.

[26] Ibid., 13.

[27] Ibid., 27.

[28] For a list of these categories see Appendix D of the Inspector General's report.

[29] Report of Inspector General, U.S. Department of Defense, 34.

[30] Ibid., 28.

[31] *Zorach v. Clauson*, in *United States Supreme Court Reports*, vol. 343 (1952), 313.

[32] "Natural law" was understood to be a dictate of right reason, derived from God's eternal law, that was the source of all human laws. See Thomas Aquinas's *Summa Theologica* found in Jeffrey A. Brauch, *Is Higher Law Common Law? Readings on the Influence of Christian Thought in Anglo-American Law*. According to William Blackstone in his *Commentaries on the Laws of England*, which was foundational to American law, "natural law" was the result of mankind's attempt to understand the eternal laws of the Creator through the filters of revealed law (Holy Scripture) and right reason. Thus, all human laws depended on both the law of nature and the law of revelation. Blackstone's explanation of "natural law" can also be found in Brauch's book. To both Aquinas and Blackstone, any human law that contradicted the natural or divine laws was no law at all, but a perversion of the law.

[33] Peter Marshall and David Manuel, *The Light and the Glory* (Grand Rapids, Mich.: Fleming H. Revell, 1977), 120.

[34] John Adams to Thomas Jefferson, letter, 19 April 1817, quoted in David Barton, "A Few Declarations of Found Fathers and Early Statesmen on Jesus, Christianity, and the Bible," http://www.wallbuilders.com/LIBissuesArticles.asp?id=8755 (accessed 17 December 2015).

[35] Declaration of Independence (1776).

[36] George Washington, "Farewell Address," *The Avalon Project*, Lillian Goldman Law Library, Yale Law School, http://avalon.law.yale.edu/18th_century/washing.asp (accessed 14 December 2015).

[37] John Adams to Zabdiel Adams, letter, 21 June 1776, *Archives.gov*, http://founders.archives.gov/documents/Adams/04-02-02-0011 (accessed 15 December 2015).

[38] John Adams to Officers of the First Brigade of the Third Division of the Militia of Massachusetts, letter, 11 October 1798, quoted in David Barton, "John Adams: Was He Really an Enemy of Christians? Addressing Modern Academic Shallowness," June 2011, http://www.wallbuilders.com/libissuesarticles.asp?id=89988#FN43 (accessed 14 December 2015).

[39] Benjamin Rush, "A Defence of the Use of the Bible as a Schoolbook," *Essays, Literary, Moral, & Philosophical* (Philadelphia: Thomas & Samuel F. Bradford, 1798), 112, quoted in David Barton, "A Few Declarations of Founding Fathers and Early Statesmen on Jesus, Christianity, and the Bible," May 2008, http://www.wallbuilders.com/libissuesarticles.asp?id=8755#R105 (accessed 14 December 2015).

[40] *Marsh v. Chambers*, in *United States Supreme Court Reports*, vol. 463, (1983), 790 (quoting *Wisconsin v. Pelican Ins. Co.*, 127 U.S. 265, 297 (1888)).

[41] Act of March 3, 1791, Ch. XXVIII, § 5, 1 Stat. 222.

[42] *Laws of the United States in Relation to the Navy and Marine Corps*, compiled by Benjamin Homans, (Washington, D.C.: J. and G.S. Gideon, 1843), 48.

[43] Ibid., 59.

[44] *US Code*, vol. 10, sec. 6031 (b).
[45] Abraham Lincoln, "General Order Respecting the Observance of the Sabbath Day in the Army and Navy," 15 November 1862, http://www.wallbuilders.com/LIBissuesArticles.asp?id=51 (accessed 14 December 2015).
[46] Michael Snape, *God and Uncle Sam: Religion and America's Armed Forces in World War II*, (Rochester, NY: The Boydell Press, 2015), 210.
[47] The full letter from FDR to the troops reads "As Commander-in-Chief I take pleasure in commending the reading of the Bible to all who serve in the armed forces of the United States. Throughout the centuries men of many faiths and diverse origins have found in the Sacred Book words of wisdom, counsel, and inspiration. It is a fountain of strength and now, as always, an aid in attaining the highest aspirations of the human soul. Very sincerely yours, Franklin D. Roosevelt."
[48] Gen. Dwight D. Eisenhower, "D-Day Message," 6 June 1944, available online at http://www.wallbuilders.com/libissuesarticles.asp?id=144598 (accessed 21 November 2015).
[49] These statistics are available at https://w20.afpc.randolph.af.mil/AFPCSECURENET20/PKI/MainMenu1.aspx. As this is an AFPC secure site, a Common Access Card is required to retrieve the data.
[50] This statistic was derived from adding all the orthodox Christian denominations, which included "Christian-No denominational preference" but not Church of Jesus Christ-Latter Day Saints, Christian Science, or Jehovah's Witnesses. Of the 374,379 Airmen in the Regular Air Force and the Reserve Component, 272,801 selected a Christian preference.
[51] In a phone interview Colonel David Carr at the Office of the Chief of Chaplains stated that the statistic for "No Religious Preference" does not necessarily indicate the total number of people who do not identify with a religious faith. He suggested that the number who selected "No Religious Preference" (77,046 Airmen across the Regular and Reserve Components) could also include those who simply do not have a denominational preference for their religious creed.
[52] AFI 90-506, *Comprehensive Airman Fitness*, 2 April 2014, par. 1.3.
[53] Ibid., attachment 2.
[54] Ibid.
[55] Kanita Dervic, et al, "Religious Affiliation and Suicide." *The American Journal of Psychiatry*, 161, no. 12 (December 2004): 2303-2308.
[56] Robin E. Gearing and Dana Lizardi, "Religion and Suicide," *Journal of Religion and Health*, 48, no. 3, (September 200): 332-341.
[57] U.S. Const. amend. 1.
[58] See *Zorach v. Clauson*, 306 (holding a school program allowing for students to be released from school in order to attend religious instruction was not coercive); *School District of Abington Township v. Schempp*, in *US Supreme Court Reports*, vol. 374, (1963) 203 (finding government coercion in mandatory Bible reading and recitations of the Lord's Prayer before school).
[59] See *Goldman v. Weinberger*, in *US Supreme Court Reports*, vol. 475 (1986), 503 (holding, in a 5-4 decision, that the Free Exercise Clause does not prohibit the Air Force uniform regulation from being applied to someone even though it restricts the wearing of headgear required for his religious beliefs; but see *US Code*, vol. 10, section 774 (Congress responding to *Goldman* by providing "a member of the armed forces may wear an item of religious apparel while wearing the uniform of the member's armed force"); see also *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, in *US Supreme Court Reports*, vol. 505, (1993), 520 (striking down a law that prohibited animal sacrifices and holding "Legislators may not devise mechanisms, overt or disguised, designed to persecute or oppress a religion or its practices").
[60] The "wall of separation between Church and State" metaphor has been used by some to interpret the meaning of the Establishment Clause to require government to avoid anything religious. The metaphor comes from a letter written by President Thomas Jefferson to the Danbury Baptist Association. The correspondence between Jefferson the Association can be found at http://www.wallbuilders.com/libissuesarticles.asp?id=65.
[61] The first mention of the "wall of separation" metaphor was in *Reynolds v. United States*, an 1878 Free Exercise Clause case that upheld Congress's authority to outlaw polygamy.
[62] *Everson v. Board of Education*, in *US Supreme Court Reports*, vol. 330, (1947), 18.
[63] Ibid., 15.
[64] *Epperson v. Arkansas*, in *US Supreme Court Reports*, vol. 393, (1968), 103-04.
[65] *Lemon v. Kurtzman*, in *US Supreme Court Reports*, vol. 403, (1973), 602.
[66] Ibid.

[67] *Wallace v. Jaffree*, in *US Supreme Court Reports*, vol. 472, (1985) 38.
[68] *Edwards v. Aguillard*, in *US Supreme Court Reports*, vol. 482, (1987), 578.
[69] *Wallace v. Jaffree*, 89 (Burger, C.J., dissenting)(citations omitted).
[70] *Lamb's Chapel v. Moriches Union Free School District*, in *US Supreme Court Reports*, vol. 508, (1993), 398-99 (Scalia, J., concurring).
[71] *Aguilar v. Felton*, in *US Supreme Court Reports*, vol. 473, (1985), 421 (O'Connor, J., dissenting).
[72] *Marsh v. Chambers*, 783.
[73] *Board of Education of Kiryas Joel Village School District v. Grumet*, in *US Supreme Court Reports*, vol. 512, (1994), 751 (Scalia, J., dissenting).
[74] *Lee v. Weisman*, in *US Supreme Court Reports*, vol. 505, (1992), 577.
[75] *Board of Education of Kiryas Joel Village School District v. Grumet*, 751(Scalia, J., dissenting).
[76] See *Trunk v. City of San Diego*, in *Federal Reporter 3d*, vol. 629 (9th US Circuit Court of Appeals, 2011), 1099.
[77] *Sherbert v. Verner*, in *US Supreme Court Reports*, vol. 374 (1963), 403.
[78] *Wisconsin v. Yoder*, in *US Supreme Court Reports*, vol. 405 (1972), 215.
[79] *Employment Division v. Smith*, in *US Supreme Court Reports*, vol. 494, (1990), 872.
[80] *US Code*, vol. 42, sec. 2000bb et seq.
[81] Specifically, the second prong of the *Lemon* test requires the Air Force to be neutral toward religion.
[82] RFRA imposes a standard of strict scrutiny on the Air Force's restriction of religious expression.
[83] Military Religious Freedom Foundation, "Our Mission," http://www.militaryreligiousfreedom.org/about/our-mission/ (accessed 17 December 2015).
[84] Steven D. Smith, "The Illusion of Religious Neutrality," Online Library of Law & Liberty, 3 April 2012, http://www.libertylawsite.org/liberty-forum/the-illusion-of-religious-neutrality/ (accessed 15 December 2015).
[85] *Epperson v. Arkansas*, 106.
[86] R. George Wright, "Can We Make Sense of 'Neutrality' in the Religion Clause Cases?: Seven Rescue Attempts and a Viable Alternative," *Southern Methodist University Law Review*, vol. 65, 877-909, 882.
[87] Ibid., 883.
[88] Ibid., 887.
[89] *McCreary County v. American Civil Liberties Union of Kentucky*, in *US Supreme Court Reports*, vol. 545, (2005), 876 (quoting *Sherbert v. Verner*, 374 U.S. 398, 422)(Harlan, J., dissenting).
[90] *Trunk v. City of San Diego*, in *Federal Reporter 3d*, vol. 629, (2012), 1106.
[91] *School District of Abington Township v. Schempp*, 306, (Goldberg, J., concurring).
[92] *Lemon v. Kurtzman*, 614.
[93] *McCreary County v. American Civil Liberties Union of Kentucky*, 844 (Scalia, J., dissenting).
[94] Thomas Jefferson to the Danbury Baptist Association, letter, 1 January 1802, Library of Congress, http://www.loc.gov/loc/lcib/9806/danpre.html (accessed 21 November 2015).
[95] In *Legislating Morality*, authors Norman Geisler and Frank Turek argue that the founders intended to protect freedom *of* religion, not guarantee freedom *from* religion. "If the First Amendment guaranteed freedom *from* religion, it would also require freedom *from* speech, *from* assembly, and *from* the press." Norman Geisler and Frank Turek, *Legislating Morality*, (Eugene, Oregon: Wipf and Stock Publishers, 1998), 80.
[96] *Everson v. Board of Education*, 18.
[97] *Zorach v. Clauson*, 314-15.
[98] Ibid., 315.
[99] *Walz v. Tax Commission of New York*, in *US Supreme Court Reports*, vol. 397, (1970), 702 (emphasis added).
[100] *Board of Education of Kiryas Joel Village School District v. Grumet*, 705.
[101] *School District of Abington Township v. Schempp*, 305, (Goldberg, J., concurring).
[102] See *Lamb's Chapel v. Moriches Union Free School District*, 384; *Widmar v. Vincent*, in *US Supreme Court Reports*, vol. 454, (1981), 276 (finding that the government's interest "in maintaining strict separation of church and state" was not sufficiently compelling to restrict religious speech); *Everson v. Board of Education*, 18 ("State power is no more to be used to so as handicap religions, than it is to favor them").
[103] See *Reed v. Town of Gilbert*, in *US Supreme Court Reports*, vol. 576, (2015), ___; *Good News Club v. Milford Central School*, in *US Supreme Court Reports*, vol. 533, (2001), 98.
[104] See *Capitol Square Review Advisory Board v. Pinette*, in *US Supreme Court Reports*, vol. 515, (1995), 764.

[105] See generally, *Lynch v. Donnelly*, in *US Supreme Court Reports*, vol. 465, (1984), 668 (rejecting the dissent's assertion that a crèche on public property violated the Establishment Clause because an observer may perceive the city has aligned itself with the Christian faith) and Justice Sandra Day O'Connor's concurrence.
[106] *Americans United for Separation of Church and State v. City of Grand Rapids*, 1553.
[107] Ibid.
[108] Todd Starnes, "Air Force Removes Bible from POW-MIA Display," *FoxNews.com*, 31 March 2014, http://www.foxnews.com/opinion/2014/03/31/air-force-removes-bible-from-pow-mia-display.html (accessed 15 December 2015).
[109] The benefit to religion, specifically Christianity, is that its inclusion on the display conveyed the positive message that religion is meaningful, helpful, and beneficial.
[110] Department of the Air Force, "Interim Guidelines Concerning Religious Expression in the Air Force," August 2005.
[111] Department of the Air Force, "Revised Interim Guidelines Concerning Free Exercise of Religion in the Air Force," 9 February 2006.
[112] Ibid.
[113] General Norton A. Schwartz, memorandum, 1 September 2011.
[114] Congressman J. Randy Forbes to General Mark A. Welsh III, letter, 6 May 2014, 1.
[115] Ibid. A "heckler's veto" is explained in endnote 17.
[116] Todd Starnes, "Air Force Officer Told to Remove Bible from Desk," http://radio.foxnews.com/toddstarnes/top-stories/air-force-proselytizing-crosses-the-line.html (accessed 19 December 2015).
[117] AFI 1-1, par. 2.11.
[118] AFI 36-2706, *Equal Opportunity Program Military and Civilian*, 5 October 2010, Incorporating Change 1, 5 October 2011. Curiously, the definition of "religion" in the AFI appears tautological. The AFI uses the term "religious" twice to define "religion." What the definition then is saying is that religion is religion because it is religious. That understanding of the definition is not helpful. To make sense of the definition of religion without the tautology the phrase "generally evidenced through specific religious observances" should not be read as an essential element in what a religious belief is, but merely a characteristic of some religious beliefs. Reading the word "generally" as meaning "commonly" or "for the most part" will prevent the definition from being tautological.
[119] See generally *The God Delusion* by Richard Dawkins, *God is not Great: How Religion Poisons Everything* by Christopher Hitchens, and *Eupraxophy: Living without Religion* by Paul Kurtz where they argue their atheism should not be considered a religion.
[120] Advanced Distributed Learning Service (ADLS), "Free Exercise of Religion," https://golearn.adls.af.mil/kc/main/kc_frame.asp (accessed on 14 December 2015). In order for the trainee to move on in the training he must answer a "Knowledge Check" question. The Knowledge Check question for the definition of religion asks "True or False. Those who practice a faith, but do not affirm the existence of a supreme being, are not included in the Air Force's definition of religion." The correct answer is "False."
[121] Congressman J. Randy Forbes to General Mark A. Welsh III, letter, 6 May 2014, 1.
[122] AFI 1-1, par. 2.12.
[123] Dictionary.com, "ensure," http://dictionary.reference.com/browse/ensure?s=t (accessed 15 December 2015).
[124] Congressman J. Randy Forbes to General Mark A. Welsh III, letter, 6 May 2014, 2.
[125] *School District of Abington Township v. Schempp*, 308 (Goldberg, J., concurring).

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